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EXAMINER

WARTALOWICZ, PAUL A

ART UNIT	PAPER NUMBER
1754	

DATE MAILED: 03/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/684,944

Applicant(s)

KELLER, HI THOMAS

Examiner

Paul A. Wartalowicz

Art Unit

1754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☒ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments filed on December 27, 2005 with respect to 35 U.S.C 112 have been fully considered but they are moot because of Applicant amendments.

Applicant's arguments filed on December 27, 2005 with respect to 35 U.S.C 102 and 35 U.S.C. 103 have been fully considered but they are not persuasive.

Applicant argues that Detweiler et al. lack a visible background, that when combined with a pattern, would create a patchwork appearance.

This argument is not persuasive for the following reason: Detweiler et al. teach a wood panel (fig. 1, #10) comprising a substrate pattern (col. 1, lines 30-31) and a background (fig 1, #12) formed from wood (col. 3, line 44) wherein patterns of various types can be achieved by mixing and matching the individual wood pieces (col. 4, lines 28-31).

Applicant argues that there is no teaching that Cramer can appear in a panel for use in a casegood furniture or any other way as either a background or as a repeatable pattern.

This argument is not persuasive for the following reason: Cramer teaches a flitch and sheets of veneer with decorative patterns (col. 1, lines 8-10) wherein the invention of Cramer is used for case goods furniture and wall-paneling (col. 1, lines 40-43).

As to the limitation of being repeatable, Cramer is not relied upon to show that the pattern is repeatable. However, the pattern of Cramer would inherently be repeatable.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant argues that Popat is directed to a method of producing image transfer sheets, or decals, but otherwise completely fails to suggest or teach forming a pattern for furniture having a patchwork appearance.

This argument is not persuasive for at least two reasons: First, Popat teaches transferring images to furniture (paragraph 0014, lines 14-15). Second, Popat is not relied upon to teach the limitation of a patchwork appearance.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant argues that neither Detweiler et al. nor Cramer disclose both a substrate and a background.

This argument is not persuasive for the following reason: Detweiler et al. teach a wood panel (fig. 1, #10) comprising a substrate pattern (col. 1, lines 30-31) and a background (fig 1, #12) formed from wood (col. 3, line 44) wherein patterns of various types can be achieved by mixing and matching the individual wood pieces (col. 4, lines 28-31).

Applicant argues that there is no reason for the combination of Detweiler et al. and Cramer.

This argument is not persuasive for the following reason: Detweiler et al. teach a decorative pattern constructed from wood elements (col. 4, lines 29-31). Cramer teaches that patterns (col. 1, lines 9-10) are sought by the furniture and decorating industries (col. 1, lines 40-41). This is the motivation for the combination of the references.

Applicant argues that neither Detweiler et al. nor Cramer disclose furniture.

This argument is not persuasive for the following reason: Cramer teaches patterns for use in the furniture industry (col. 1, lines 40-42).

Applicant argues that Popat et al. discloses nothing about the use of wood pieces with differing visible grains to create a panel or furniture pattern.

This argument is not persuasive for at least two reasons: First, Popat teaches transferring images to furniture (paragraph 0014, lines 14-15). Second, Popat is not relied upon to teach the limitation of wood pieces with differing visible grains.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

### ***New Grounds of Rejections***

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 2, 7, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Detweiler et al. (U.S. 4963407) in view of Severson et al. (U.S. 5322584).

Detweiler et al. teaches a wood panel (fig 1, #10), affixed to a substrate (fig 2a, #14), comprising a background (fig 1, #12) formed from wood (col. 3, line 44) and a pattern formed (col. 1, lines 30-31) wherein the background and pattern are so adjoined that the pattern creates a repeatable patchwork appearance (grid pattern, col. 2, lines 35-36) against the background. Detweiler et al. also teaches the wood pieces used for construction having a veneer (thickness of 0.11 inches, col. 4, line 27). Note that the veneer is defined as a thin sheet of a material; see Webster's Ninth New Collegiate Dictionary-the thickness of Detweiler et al.'s wood reads on the claimed veneer. Detweiler et al. fail to teach wherein each of the at least two other types of visible grains contrasting with the at least one type of visible grain of the background and contrasting with each other.

Severson et al. teach a decorative wood panel (col. 4, lines 4-6) wherein panel tiles are constructed of grains of different woods (col. 4, lines 12-13) for the purpose of providing a decorative appearance (col. 4, lines 12-13).

Therefore, it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to provide panel tiles constructed from grains of different woods (col. 4, lines 12-13) for the purpose of providing a decorative

appearance (col. 4, lines 12-13) in panel-like products (col. 4, lines 16-17) as taught by Severson et al.

Claims 3-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Detweiler et al. ('407) in view of Severson et al. (U.S. 5322584) and Cramer et al. (792).

Detweiler et al. teaches a decorative wood panel article as described above. Detweiler et al. further teaches that the design or pattern is achieved by assembling a plurality of wood pieces (veneer) on a wood substrate to achieve the desired design or pattern (col. 3, lines 22-24).

As to claims 3, 9, and 15, Detweiler et al. fail to teach that the second contrasting wood grain types are selected from the group consisting of mahogany, maple, cherry, and prima vera.

Cramer et al., however, teaches that thin sheets of veneer are assembled into articles of furniture or decorative wall paneling (col. 1, lines 14-16). Cramer et al. further teaches that the veneers are selected from maple, cherry, birch, and white oak, etc... (col. 1, lines 44-46) for the purpose of having different wood textures for wall preparations to have desirable decoration (col. 1, lines 40-43).

Therefore, it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided different wood-grain types such as maple and cherry in Detweiler et al. in order to have a variety of different wood designs and patterns as taught by Cramer et al.



As to claim 13, Detweiler et al. also fail to teach a furniture member incorporating therein the substrate with wooden panel affixed thereto. Cramer et al., however, teach veneer slices with patterns that can be made into furniture member incorporating therein the substrate with wooden panel affixed thereto (furniture and wall-paneling, col. 1, lines 15-16) because it is desirable in the industries of furniture and decorating to incorporate patterns into casegood furniture and wall-paneling (col. 1, lines 40-44).

Therefore, it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided veneer slices with patterns that can be made into furniture in Detweiler et al. in order incorporate patterns into casegood furniture and wall-paneling as dictated by the industries of furniture and decorating.

As to claims 4, 10, and 16, Detweiler et al. also fails to teach a wooden panel wherein the pattern is a cathedral window quilt pattern. Cramer et al., however, teach a cathedral pattern for veneer slices (col. 5, line 28) that can be varied easily (col. 5, line 30) based upon the desired end use of the product.

Thus, one of ordinary skill in the art would have recognized that the pattern of the wooden panel would be easily determined depending on the desired design as described above by Cramer et al.

Therefore, it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided a cathedral pattern in Detweiler et al. in order to have different desired patterns in the wooden panel as taught by Cramer et al.

As to claims 5-6, 11-12, 17-18, Detweiler et al. ('407) fail to teach a pattern comprising a double wedding ring pattern or star pattern.

Detweiler et al. teaches that the pattern can be achieved by a variety of different design (col. 3, lines 22-24). Cramer et al. also teaches that the pattern of the wooden panel would be easily determined depending on the desired design such as the cathedral pattern. As to the limitation of a double wedding ring pattern and a star pattern, one of ordinary skill in the art would have been motivated to change the pattern in order to change the visual attractiveness of the wood product (wood panel, furniture, or panel door) based on the desired end result of the product as taught by the primary and secondary reference in the absence of unexpected results. (See MPEP 2144.04).

Therefore, it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided different patterns (double wedding ring or star pattern) in Detweiler et al. in order to change the visual attractiveness of the wood product as taught by Cramer et al. in the absence of unexpected results.

Claims 19-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Detweiler et al. ('407) in view of Severson et al. (U.S. 5322584) and Cramer et al. ('792) in further view of Popat et al. (U.S. 2002/0029843).

Detweiler et al. teaches a wood panel (fig 1, #10), affixed to a substrate (fig 2a, #14), comprising a background (fig 1, #12) formed from wood (col. 3, line 44) and a

pattern formed (col. 1, lines 30-31) wherein the background and pattern are so adjoined that the pattern creates a repeatable patchwork appearance (grid pattern, col. 2, lines 35-36) against the background. Detweiler et al. also teaches the wood pieces used for construction having a veneer (thickness of 0.11 inches, col. 4, line 27). Note that the veneer is defined as a thin sheet of a material; see Webster's Ninth New Collegiate Dictionary-the thickness of Detweiler et al.'s wood reads on the claimed veneer. Detweiler et al. fail to teach wherein each of the at least two other types of visible grains contrasting with the at least one type of visible grain of the background and contrasting with each other.

Severson et al. teach a decorative wood panel (col. 4, lines 4-6) wherein panel tiles are constructed of grains of different woods (col. 4, lines 12-13) for the purpose of providing a decorative appearance (col. 4, lines 12-13).

Therefore, it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to provide panel tiles constructed from grains of different woods (col. 4, lines 12-13) for the purpose of providing a decorative appearance (col. 4, lines 12-13) in panel-like products (col. 4, lines 16-17) as taught by Severson et al.

As to claims 21 and 27, Detweiler et al. teaches a decorative wood panel article as described above. Detweiler et al. further teaches that the design or pattern is achieved by assembling a plurality of wood pieces (veneer) on a wood substrate to achieve the desired design or pattern (col. 3, lines 22-24).

Detweiler et al. fail to teach that the second contrasting wood grain types are selected from the group consisting of mahogany, maple, cherry, and prima vera.

Cramer et al., however, teaches that thin sheets of veneer are assembled into articles of furniture or decorative wall paneling (col. 1, lines 14-16). Cramer et al. further teaches that the veneers are selected from maple, cherry, birch, and white oak, etc... (col. 1, lines 44-46) for the purpose of having different wood textures for wall preparations to have desirable decoration (col. 1, lines 40-43).

Therefore, it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided different wood-grain types such as maple and cherry in Detweiler et al. in order to have a variety of different wood designs and patterns as taught by Cramer et al.

As to the claimed limitation of wherein said panel comprising a sheet material further comprising a decal in claims 20 and 26, Detweiler et al. fail to teach the claimed aspect of the decal system. Popat et al. however teach the decal system comprising a release coated liner sheet used in wood furniture and a wide variety of other surfaces (paragraph 0014, lines 12-16).

Therefore, one of ordinary skill in the art would have recognized the usage of the decal system in the wood panel article as described in Popat et al.

Thus, it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided a decal system in Detweiler et al.

('407) and Cramer et al. ('792) in order to attach a custom printed image pattern to a furniture surface without the use of a heating step as taught by Popat et al.

As to claims 19 and 25, Detweiler et al. ('407) and Cramer et al. (992) teach a substrate, a background, and a pattern with two discrete pieces of wood.

As to the claimed shape of a star pattern, Popat et al (U.S. 2002/0029843) teaches the star decal pattern. Furthermore, the limitation of a double wedding ring pattern or a different visual attractiveness of the wood product would be readily determined through routine experimentation depending on the desired end results as shown by the primary and secondary references above. (See MPEP 2144.04).

As to claims 23-24 and 29-30, Detweiler et al. ('407) fail to teach a pattern comprising a double wedding ring pattern or star pattern.

Detweiler et al. teaches that the pattern can be achieved by a variety of different design (col. 3, lines 22-24). Cramer et al. also teaches that the pattern of the wooden panel would be easily determined depending on the desired design such as the cathedral pattern. As to the limitation of a double wedding ring pattern and a star pattern, one of ordinary skill in the art would have been motivated to change the pattern in order to change the visual attractiveness of the wood product (wood panel, furniture, or panel door) based on the desired end result of the product as taught by the primary and secondary reference in the absence of unexpected results. (See MPEP 2144.04).

Therefore, it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided different patterns (double wedding ring or star pattern) in Detweiler et al. in order to change the visual attractiveness of the wood product as taught by Cramer et al. in the absence of unexpected results.

As to claims 22 and 28, Detweiler et al. also fails to teach a wooden panel wherein the pattern is a cathedral window quilt pattern. Cramer et al., however, teach a cathedral pattern for veneer slices (col. 5, line 28) that can be varied easily (col. 5, line 30) based upon the desired end use of the product.

Thus, one of ordinary skill in the art would have recognized that the pattern of the wooden panel would be easily determined depending on the desired design as described above by Cramer et al.

Therefore, it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided a cathedral pattern in Detweiler et al. in order to have different desired patterns in the wooden panel as taught by Cramer et al.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul A. Wartalowicz whose telephone number is (571) 272-5957. The examiner can normally be reached on 8:30-6 M-Th and 8:30-5 on Alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley Silverman can be reached on (571) 272-1358. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1754

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Paul Wartalowicz  
March 6, 2006



COLLEEN P. COOKE  
PRIMARY EXAMINER